The Law of Arrest for Public Offenses in Kentucky

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The criminal law is too often neglected by the best element of the legal fraternity, and suffered to fall into the hands of those members of the bar usually denominated "shysters." That this is true is much to be regretted; the criminal law has to do more particularly with life and liberty, while the civil law usually deals with the property rights of the citizen. Of course, this is but a rough classification, and is meant so to be; but, looking at the question from this point of view, criminal law is as much more important to the people than the civil, as the right of life and liberty is more important to them than property rights. Every person should know something of the criminal law and procedure of his State.

When man enters that form of organized society called government, he gives up a part of his natural rights in exchange for the protection to the remainder afforded by the government. In a state of nature, obviously, might is right; and, therefore, men, when they rise to even the lowest scale of intellectual civilization, organize themselves into some form of government whereby the rights of the weak will not always be at the mercy of the strong.

The Anglo-Saxon people, while the love of law and order and a high respect for the judiciary have always constituted the keystone to the arch of their civilization, have, nevertheless, ever been exceedingly jealous of any infringement of their liberty; they have never been willing to surrender this heritage even to the regular
officers of the law, except when the public safety demanded this sac-
ifice. It is not our purpose to run the whole circle of the liberty of
the citizen, but only to discuss one small segment of the procedure
by which it may be lawfully restrained or taken away. By whom
then may the citizen be lawfully arrested and under what circum-
stances? At the common law, there were (as now) certain con-
servators of the peace, such as sheriffs, watchmen and constables, to
whom process of arrest was usually directed and who had, as a part
of their inherent power, the right of arrest. That these might exe-
cute any lawful warrant which came to their hands, by arresting the
named defendant or defendants, is not at all in doubt or dispute;
neither is it in question that they had authority to arrest for any
felony occurring in their presence or which they had reasonable
grounds to believe had been committed within their jurisdictions;
we shall waste no time with these obvious propositions but pass on
to the narrower questions of when may conservators of the peace
arrest for those minor offenses known as breaches of the peace or
misdemeanors. The rule is thus stated by Blackstone:

"He (officer) may without warrant arrest anyone for
a breach of the peace committed in his view, and carry
him before a justice of the peace. And in case of felony
actually committed, or a dangerous wounding, whereby
felony is like to ensue, he may, on probable suspicion,
arrest the felon."—Blackstone's Commentaries, V. 2,
p. 292.

In Hawkins Pleas of the Crown it is said:

"But it is difficult to find any instance wherein any
constable hath any greater power than a private person
over a breach of the peace out of his view; and it seems
clear that he cannot justify such an arrest for any such of-
fense without a warrant from a justice of the peace."—
Hawkins Pleas of the Crown, v. 2, p. 128, (sec. 9.)

In East's Crown Law, v. 1, p. 303, it is said:

"A constable, or other known conservator of the
peace, may lawfully interpose upon his own view to pre-
vent a breach of the peace or to quell an affray."

In Bishop's New Criminal Law the rule is thus stated:

"If one, even an officer, undertakes to arrest another
unlawfully, the latter may resist him. He has no protec-
tion from his office, or from the fact that the other is an
offender. But the doctrine already stated, that nothing
short of an endeavor to destroy life or inflict great bodily harm will justify the taking of life, prevails in this case; so that, if the person thus being unlawfully arrested kills the aggressor in resisting, he commits thereby the lower degree of felonies—homicide, called manslaughter. Still, in principle, life and liberty stand substantially on one foundation; life being valueless without liberty. And the reason why a man may not oppose an attempt on his liberty by the same extreme measures permissible in an attempt on his life, appears to be because liberty can be obtained by a resort to the laws."—Bishop's New Criminal Law, v. 1, p. 868. (2).

At common law, then, a conservator of the peace could arrest for any offense, (whether felony or misdemeanor), under a lawful warrant legally coming to his hands; he could arrest for any offense, whether felony or misdemeanor, committed in his presence (view). But he could only arrest for a misdemeanor if he had a lawful warrant, or when the offense was committed in his view or presence. He could not arrest for such an offense upon suspicion or even upon reasonable information that it had been committed.

Our Criminal Code is merely declaratory of the common rule under discussion; so much of it as bears immediately upon the subject in hand is as follows:

Sec. 36. "A peace officer may make an arrest:
"1. In obedience to a warrant of arrest delivered to him.
"2. Without a warrant, when a public offense is committed in his presence, or when he has reasonable grounds for believing that the person arrested has committed a felony."

This section of the code has been construed several times by our Court of Appeals, and the common law rule, above set forth, firmly maintained. In the case of Wright vs. the Commonwealth, 85th Ky. R., p. 123, the facts were briefly as follows: A party went to Wright's house at night to arrest him. They had no warrant, but there was a justice of the peace in the crowd who undertook verbally to authorize one of the party to make the arrest. The appellant killed one of the would-be arresting party and was indicted for murder, and convicted. The Court of Appeals reversed the judgment, and in the opinion, after citing section 36 of the code, said:
not even a peace officer is authorized to make an arrest without a warrant issued and delivered to him, except when a public offense is committed in his presence, or when he has reasonable grounds to believe that the person arrested has committed a felony."

The Court, then, in their opinion, go on to say, that, inasmuch as the would-be arresting party had no warrant, and there was no evidence that the appellant had committed a felony, he, the appellant, had the right to resist the forcible breaking into his dwelling house; and that both he and his servants, or guests, might arm themselves for the purpose of resistance; and that, in making this resistance, they could exercise such force as was necessary, even to taking the life of those present, aiding and assisting, as well as those actually breaking and entering. It is true, the Court make the right to resist to the death, to turn upon the unlawful breaking into the appellant’s house; and they specially say, that, generally speaking, one has not the right to take the life in resisting an arrest, where no felony accompanies the deprivation of liberty. But there is no intimation that the Court meant to qualify the rule which authorizes the resistance of an unlawful arrest, so as to deprive the sufferer, if the officer in making the arrest puts his life in jeopardy or threatens him with great bodily harm, if he does resist, from killing the officer, if that be necessary to protect himself.

In the case of Bates vs. the Commonwealth, 13 Ky. Law R., p. 132, it appears that Bates and several companions who were resisting an arrest by an officer, who had no warrant, killed the officer. They were indicted and convicted. In reversing the case, the Court said:

"Under our law one who is in fact a peace officer can only make an arrest in obedience to a warrant, or without one when a public offense is committed in his presence, or he has reasonable grounds for believing that the person he is about to arrest has committed a felony, and a private person may do so when he has reasonable grounds for believing that the party has committed a felony.

"If there be reasonable opportunity the person attempting to make the arrest must inform the party about to be arrested of his intention, of the offense charged, and if acting under a warrant must say so, and, if demanded, show it. Criminal code, sections 36, 37, 39."
These statutory provisions have been enacted as a safeguard of that personal liberty, the careful protection of which is the boast of the common law, and to which every person, without regard to condition of life, is entitled."

The case of Glazar vs. Hubbard, 102 Ky., p. 68, was an action for false imprisonment. The appellant, Glazar, was arrested upon the following telegram: ""Arrest Ben Glazar and wire me. Chief Police of Opalica, Ala."

Glazar was arrested and taken before Hubbard, the Police Court Judge of Princeton, Ky., and was by that magistrate sent to jail for safe keeping. Afterwards, he was discharged and brought an action against the magistrate for false imprisonment. The lower court, upon the trial of the case for damages, instructed the jury that Glazar was not entitled to reparation unless the magistrate, in depriving him of his liberty, acted without honest conviction of duty and with corrupt and improper motives. As there was no evidence that the magistrate acted from bad or corrupt motives, the verdict was for him. In reversing the case the Court said:

In this case no warrant was issued at all, nor was it at the time appellant was committed to jail, or subsequently, made to appear he was guilty of a felony. As, therefore, appellee acted without legal power and consequently without jurisdiction, he is liable to appellant, though the motives actuating him may not have been improper or corrupt, and it was error for the lower court to so instruct the jury."

If a citizen is arrested unlawfully, he may resist the person so unlawfully depriving him of his liberty, and in so doing, he may oppose force to force sufficiently powerful to regain his liberty; or he may—and this doubtless is better, where the arresting party is an officer of the law—submit to the wrong, and institute an action for damages for false imprisonment.